IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ZANE FIELDS,
Plaintiff

V. No. 3:93CV95-B-D

UNITED STATES OF AMERICA,
Defendant

MEMORANDUM OPINION

This cause comes before the court upon the motion of the defendant for summary judgment. The action principally involves review of decisions and/or actions of the Farmers Home Administration ("FmHA") in administering programs in which the plaintiff participated or desired to participate. The plaintiff also charges the defendant with intentional and/or negligent misrepresentations in connection with his 1988 voluntary conveyance of his farm to the FmHA in lieu of foreclosure. The plaintiff has responded and upon consideration of the record and arguments of the parties the court now rules.

I. FACTS

The plaintiff initiated this action after the National Appeals Staff of the FmHA denied his appeal of the agency's decision to reject his bid to repurchase property he conveyed to the agency in 1988. Zane Fields' involvement with the FmHA began in 1974 when he and his wife applied for a farm loan through the agency. Over the course of ten years, the plaintiff borrowed money from the FmHA secured by deeds of trust granting the agency security interests in his house and 195-acre farm located in Pontotoc County, Mississippi. In 1986, the plaintiff and his wife filed Chapter 7 bankruptcy and were discharged from personal liability on April 9, 1987. After the discharge, the plaintiff's FmHA account then in default remained secured by the real property described above.

On October 7, 1988, the plaintiff and his wife executed and delivered a warranty deed on the subject property to the FmHA and offered to voluntarily convey the property to the FmHA in lieu of foreclosure. Nothing in the record indicates that the agency was preparing to foreclose at the time of the delivery of the deed.

Local agency employees assured the plaintiff in essence that his conveyance to the FmHA would not defeat his right or that of his son, David Fields, to repurchase the property at a later time (see Affidavits of Zane Fields and David Harrelson).

On November 15, 1988, new regulations (7 C.F.R. § 1951.901, et seq.) governing farm loan servicing of FmHA accounts went into effect. In general, these regulations require the agency to notify delinquent farm program borrowers of loan servicing options as well as options remaining available to the borrower subsequent to the agency's acquisition of farm program property. On November 23, 1988, pursuant to those regulations, the plaintiff and his wife were sent a loan servicing packet which noticed them of loan servicing options that might be available, including both "primary" and "preservation" loan servicing.[1] The packet included forms in which to apply for such servicing. While the plaintiff and his wife were given 45 days in which to respond to the notice, no written response was made.[2]

On December 1, 1988,[3] the plaintiff's wife, Doris Fields hand delivered "Attachment 4" of "Exhibit A to Subpart S," FmHA Instruction 1951-S. The plaintiff had handwritten on the form his desire to convey his property to the FmHA. On February 3, 1989, the plaintiff again indicated his intent to convey the property to the FmHA through execution of FmHA form "Attachment 10" of "Exhibit A to Subpart S," FmHA Instruction 1951-S. FmHA accepted the offer to reconvey on February 10, 1989. On that date, the plaintiff's FmHA account balance was $254,545.64. The market value of the property was applied to the plaintiff's FmHA account, the senior lien holder on the property was paid in full, and the property became FmHA inventory.

---

[1]Described at 7 C.F.R. § 1951.906.

[2]The plaintiff attests that, after receiving the notice, he contacted Harrelson who agreed with the plaintiff that the plaintiff's son, David Fields, would apply for repurchase of the property, he being the more credit worthy applicant.

[3]The date stated in the text comes from ¶ 10 of the defendant's itemization of facts in support of its motion for summary judgment, and to which the plaintiff admits. The date reflected on the form itself however indicates the same was signed on the 15th of December.

On August 3, 1989, FmHA notified the plaintiff and his wife of their right to apply for lease-back/buy-back privileges by sending the appropriate forms to the plaintiff. At no time prior to the expiration of those rights did the plaintiff or his wife apply for lease-back/buy-back options; however, prior to the expiration of the time in which to so apply, the plaintiff's son, David Fields, informed the FmHA county office that he desired to apply for lease-back/buy-back rights. David Fields was informed by the FmHA that he needed to inform them of the manner in which he intended to purchase the property by April 29, 1991. David Fields informed the agency on April 27th that he wished to purchase the property through FmHA financing. On May 8, 1991, the FmHA notified the plaintiff's son of the information it needed for processing the application. David Fields submitted an application on June 7, 1991 and on June 21, 1991, FmHA informed David Fields in writing that the application was incomplete and informed him of the additional information/documentation needed to complete the processing of the application. David Fields was given until July 8, 1991 in which to provide the information. No response was ever made to the June 21, 1991 letter and, on July 18, the FmHA rejected his application. The plaintiff was given no notice of his son's rejection.

On August 18, 1991, the FmHA informed David Fields that the lease-back/buy-back period had expired and requested that he vacate the property. On January 27, 1992, the FmHA inspected the property and noticed that personal property still remained on the premises. Accordingly, the FmHA requested both David Fields and the plaintiff to remove the property and again notified both David Fields and the plaintiff that the lease-back/buy-back period had expired. There was no response to these letters.

On August 15, 1992, FmHA advertised the property for sale to the public, and on September 14, 1992, Zane Fields submitted a cash offer to purchase the property for its appraised value of $93,000.00. The plaintiff alleges he submitted a cash offer because he felt his chances would be better than if he had reapplied for FmHA loan assistance. On December 14, 1992, the FmHA informed the plaintiff that it had rejected his offer to purchase the property. FmHA had accepted another bidder's offer to purchase the property for its appraised value. The reason for the defendant's

rejection had to do with a system employed by the FmHA that prioritized bidder's applications according to certain factors enunciated in detail below. After the plaintiff's appeal of the rejection was upheld at the State office of the FmHA, and denied by the National Appeal Staff, the plaintiff brought this action.

II. ALLEGATIONS

According to the plaintiff, "[t]he basis of this complaint is the willful and wrongful failure of the employees and officials of the [FmHA] to notify and properly administer to the plaintiff and his son, David Fields, the regulations so as to afford [them] the rights due said plaintiff under the policy rules and regulations of the [FmHA], and failing to allow the plaintiff to re-purchase, lease, or buy back plaintiff's farm, which he voluntarily conveyed to the [FmHA]." Complaint, section "I." Closely tied with the plaintiff's allegations that the defendant failed to properly administer the applicable farm programs is the allegation that "employees and officials of the [FmHA] mislead (sic) and misrepresented to plaintiff that if he would voluntarily re-convey said real property to the [FmHA] they would allow him and/or his son the first chance to repurchase same, and that under the Rules and Regulations of the [FmHA] he and/or his son were granted the first right to repurchase same" (Complaint "Count Three").

Finally, the plaintiff also prays that the reconveyance be set aside as invalid for misrepresentation and/or lack of consideration. The court has jurisdiction over the plaintiff's claims that the agency failed to properly follow its own regulations pursuant to 28 U.S.C. § 1331, as the plaintiff is "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, entitled to judicial review thereof." 5 U.S.C. § 702.[4]

III. STANDARDS

[4]The rights allegedly deprived the plaintiff by agency action stem from the loan servicing regulations brought about by the Agricultural Credit Reform Act of 1987 and subsequent amendments to the Consolidated Farm and Rural Development Act, specifically 7 U.S.C. § 1985. That there is no private cause of action under these statutes, see Griffin v. Federal Land Bank, 902 F.2d 22 (10th Cir. 1990); Grant v. Farm Credit Bank of Texas, 8 F.3d 295 (5th Cir. 1993), will not preclude this court from reviewing agency action under the APA pursuant to § 1331.

Summary judgment, generally, is appropriate only if "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The entry of summary judgment is mandated by this rule, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an essential element to the case upon which that party bears the burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Before finding that no material fact exists, the court must first be satisfied that no reasonable trier of fact could have found for the nonmovant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

Section 706 of the APA provides this court the authority to:

> (1) compel agency action unlawfully withheld or unreasonably delayed; and
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be --
>
> > (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
> >
> > . . . .
> >
> > (D) without observance of procedure required by law;
> >
> > . . . .
>
> In making the forgoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

5 U.S.C. § 706(2)(A), (C), (D).

Although entitled to a presumption of regularity, Frisby v. United States Dept. of Housing & Urban Dev. (HUD), 755 F.2d 1052, 1055 (3d Cir. 1985), agency action will be set aside as arbitrary and capricious where the agency has relied on factors beyond those enumerated by Congress, or where the agency's explanation for the action taken runs counter to the evidence that was presented before it. Motor Vehicles Mfrs. Assn. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 103 S. Ct. 2856, 2867, 77 L. Ed. 2d 443, 458 (1983). Further, while the scope of review under the standard is narrow, Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416,

91 S. Ct. 814, 823-24, 28 L. Ed. 2d 136, 153 (1971), such action must still be rational and within the statutory authority of the agency. Id. Although the burden of proof rests with the party alleging agency irregularity, Louisiana Environmental Soc. v. Dole, 707 F.2d 116, 119 (5th Cir. 1983); Schweiker v. McClure, 456 U.S. 188, 196, 102 S. Ct. 1665, 1670, 72 L. Ed. 2d 1, 8 (1982), the agency retains the burden of articulating "a satisfactory explanation for its actions including a 'rational connection between the facts found and the choice made.'" State Farm, 463 U.S. at 43, 103 S. Ct. at 2867, 77 L. Ed. 2d at 458 (quoting Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168, 83 S. Ct. 239, 246, 9 L. Ed. 2d 207, 216 (1962)). After review of the administrative record submitted by the defendant, the court cannot conclude that the actions of the defendant in administrating the farm program regulations in general or its denial of the plaintiff's cash bid in particular rises to the level of arbitrary or capricious agency behavior subject to reversal.

IV. DISCUSSION

A. Lease Back/Buy Back

The plaintiff alleges that "the defendant, [FmHA]...failed to give plaintiff proper notice of the rights due him and/or his son David Fields, which would authorize the said plaintiff and/or his son to Lease-Back/Buy-Back the plaintiff's real property...." Complaint ¶ 12. Because the administrative record[5] clearly supports the defendant's position that both the plaintiff and his son were given proper notice of their lease-back/buy-back rights under the applicable provisions, this claim must be dismissed.

B. Homestead Protection/Net Recovery Buy-Out Rights

The plaintiff alleges that he was not informed or notified of his right to homestead protection as allowed by 7 C.F.R. § 1951.911, Complaint ¶ 10, or Net Recovery Buy-Out options, Complaint

[5]"Exhibit 7" to the defendant's motion for summary judgment is the letter sent by the FmHA to the plaintiff concerning the availability of the lease-back/buy-back program. As noted in the text, the plaintiff's son in fact applied for participation in the program. See also Affidavit of Zane Fields at ¶ 2 ("I was advised that FmHA officials...would work with me and assist me in re-acquiring my property, as I was advised there were several programs through which this could be accomplished.")

¶ 15.[6] The plaintiff has provided nothing in response to the motion for summary judgment indicating that proper notice of the programs mentioned in paragraph 10 of the complaint were not made as required by agency regulations. An inference of agency irregularity as concerns proper notice of the above stated loan servicing programs has not materialized in the course of the development of this cause either in this court or during the administrative appeal process, nor has the same been created by submission of the plaintiff's affidavit in response to the defendant's motion for summary judgment, which fails to address this allegation specifically. While the court is hesitant to entertain an allegation of procedural irregularity never presented to the agency itself during the appeal process, review of the record indicates that in fact the plaintiff was informed of the programs indicated, see Exhibit 4 to Affidavit of Aaron Goolsby in support of defendant's motion for summary judgment, but never responded to this notice. Although the defendant argues that the plaintiff was not eligible for participation in the Homestead program, the court need not decide the issue inasmuch as this challenge alleges the lack of notice of this program rather than the erroneous denial of the plaintiff's request to participate, a request which the record reflects was never made.

Participation in the Net Recovery Buy-Out Program would have required a response to the packet informing the plaintiff of these options within 45 days of receipt and action by the plaintiff to have the bankruptcy adjudication set aside and his debt to the defendant reaffirmed. As noted eariler, prior to the expiration of the 45-day time limit, the plaintiff requested in writing that the defendant accept their offer to convey the property in lieu of foreclosure. The court will not attempt to speculate as to why the plaintiff did not request further information but, rather, is only concerned with the issue of procedural fidelity by the FmHA as regards this claim. Thus, while the defendant concedes that its regulations subsequently required that one additional notice of such rights be sent to the plaintiff, which in fact was not accomplished, the court is of the opinion that substantial

[6]The plaintiff alleges that "[u]nder the Farmers Home Administration Regulation 1951-S and other regulations...the [FmHA]...had a duty and obligation to work with and advise the plaintiff and other family members...of [their] rights under the Rules and Regulations of the [FmHA]" specifically as regards "Homestead Protection, as well as...Preservation Loan Service Program and the Primary Loan Servicing Programs...." Complaint ¶ 10.

compliance with the regulations regarding notice of rights to its former borrower is evident and that no prejudice was occasioned by the agency's failure to furnish another notice of those rights previously given.

C. Misrepresentation

The plaintiff alleges that employees of the defendant, specifically the former county supervisor, have misrepresented and misled the plaintiff into believing that he would have notice of the rejection of his son's application so that he might apply for the options his son failed to take advantage of, namely lease-back/buy-back rights. The defendant raised the defense of sovereign immunity to this claim per 28 U.S.C. § 2680(h).

As alleged in the complaint, "officials and employees of the [FmHA] misrepresented and mislead the plaintiff to the effect that if he would voluntarily reconvey his property to the [FmHA], they would allow him to Lease-Back and Buy-Back said property under their rules and Regulations..." Complaint ¶ 11. Also it is alleged that "it was understood and agreed between plaintiff and the county [FmHA] Supervisor for Pontotoc County, that if, for any reason, the son, David Fields, did not qualify or did not have priority to purchase the same farm on a Lease-Back/Buy-back under the [FmHA] Rules and Regulations, the plaintiff himself could do so." Complaint ¶ 13. Finally, the plaintiff "prays that as a result of the misrepresentations made to plaintiff by the defendant and its agents and employees, which he acted to his detriment by conveying said real property to the defendant without any consideration therefor...that this court set aside the prior Deed and conveyance to the defendant and/or, in the alternative, hold the same totally invalid for lack of consideration and/or misrepresentation." Complaint ¶ 15.

As to the allegations incorporated in paragraphs 13 and 15, the court finds the same factually unsubstantiated. The plaintiff was given actual notice of lease-back/buy-back rights yet reconveyed his property to the FmHA prior to the period for which the exercise of those rights had expired. No genuine issue exists as to this fact. As to the allegation that employees of the defendant misled the plaintiff into believing that, if his son's application were rejected, he would be given notice or another

opportunity to repurchase the property,[7] the court finds the defendant's defense of sovereign immunity to have merit inasmuch as the "erroneous transmission of misrepresentation is the crucial element in the chain of causation from the defendant's negligence to plaintiff's damages." Rey v. United States, 484 F.2d 45, 49 (5th Cir. 1973). As there is no other indication that Congress has waived the sovereign immunity of the FmHA independently of the Federal Tort Claims Act,[8] the misrepresentation claim embodied in ¶ 13 will be dismissed. Commercial Union Ins. Co. v. United States, 928 F.2d 176 (5th Cir. 1991). Alternatively, the court finds the alleged misrepresentation by the defendant's employees, that the plaintiff would again be granted lease-back/buy-back rights long after the time in which to apply for the same had expired, to be beyond the scope of their authority and thus not binding upon the defendant. See Harrison v. Phillips, 185 F. Supp. 204, 207 (S.D. Tex. 1960).

D. Wrongful Rejection of the Plaintiff's Bid to Repurchase

The plaintiff alleges that the defendant erred in placing the plaintiff's bid in category five and that he should have been placed in category 2 pursuant to the applicable regulations. 7 C.F.R. § 1955.107(f) delineates the priority system used by the FmHA "[i]n selling suitably farmland...to applicants...as determined by the County Committee." The plaintiff's bid to repurchase the property was placed in category "v," a grouping in which bids by "[o]perators of not larger than family-size farms, as of the time immediately after the contract of sale or lease is entered into (such operators are not in need of FmHA credit assistance on eligible rates and terms)," are placed. 7 C.F.R. § 1955.107(f)(1)(v). The successful bidder's bid was placed in category "(ii)" which includes

[7]The affidavits of the plaintiff and the FmHA County Supervisor, David Harrelson, consistently affirm that it was understood at the time of conveyance and subsequently that the plaintiff was to be given an opportunity to repurchase his property, or notified of the deadline in which to do so. That opportunity was presented by the agency on 10/19/89 (letter dated 8/3/89) and included notice of the deadline in which to act. Neither affidavit states that any employee of the defendant represented to the plaintiff after this notification that he would again be given an opportunity to repurchase his property if his son's application were rejected.

[8]See n.1.

"[b]eginning farmers or ranchers, as defined in § 1955.103...as of the time immediately after the contract for sale or lease is entered into." § 1955.107(f)(1)(ii). The plaintiff does not contend that the successful bidder was inappropriately placed in category "ii" but, rather, that his bid was erroneously placed in category "v" instead of category "(ii)" described previously.

"Beginning farmers or ranchers" are defined in 7 C.F.R. § 1955.103. One requirement necessary for inclusion in that definition is that the applicant "[i]s an eligible applicant for FO loan assistance in accordance with § 1943.12...or § 1980.180..." § 1955.103(1). It is undisputed, however, that the plaintiff submitted a cash bid for the property which indicates that the plaintiff was ineligible for "FO loan assistance," see 7 C.F.R. § 1943.12(a)(6)[9] and 7 C.F.R. § 1980.180(b) and § 1975(b)(1)(vi)[10], and thus, was properly placed in category "v" by the FmHA. Having found substantial compliance with FmHA's rules and regulations under the Administrative Procedure Act in providing the plaintiff his rights under the applicable provisions and also that the defendants are immune from the plaintiff's misrepresentation claim, which fails as a matter of law, the plaintiff's suit will be dismissed with prejudice. An order in conformance with this memorandum opinion will issue.

THIS, the _____ day of December, 1994.

---

[9] Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rate and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

7 C.F.R. § 1943.12(a)(6).

[10] 7 C.F.R. § 1980.180(b) provides that "[t]he farm ownership loan eligibility requirements are the same as the operating loan eligibility requirements as defined in § 1980.175..." except for certain exceptions not relevant here. § 1980.175(b)(1)(vi) again requires the applicant to:

> [b]e unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

7 C.F.R. § 1980.175(b)(1)(vi).

_____
NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE